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Supreme Court, U.S.
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In The

Supreme Court of the United States

PAUL TIEN,

Petitioner,

v.

MING TIEN, AMERICAN UNIVERSITY OF THE CARIBBEAN, AMERICAN UNIVERSITY OF THE CARIBBEAN, N.V., THE AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE, MEDICAL EDUCATION INFORMATION OFFICE, INC., AND MEDICAL EDUCATION SERVICES, INC.,

Respondents.

On Petition For A Writ Of Certiorari To The Third District Court Of Appeal, State Of Florida

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case involves the validity of overseas service of process on the petitioner, a foreign national. The Florida District Court of Appeal affirmed the denial of a motion to quash substitute service of process in Taiwan. Although such substitute service may be permissible under Florida law, it is not consistent with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Convention"). The People's Republic of China, which is viewed by many as the sole sovereign of China, including Taiwan, has acceded to the Hague Convention, but Taiwan has not. Also at issue is a Florida precedent which suggests that before petitioner may collaterally attack any state court judgment affecting his property, he must first petition this Court for a writ of certiorari.

Three questions are presented:

1. Does a court lack jurisdiction under the political question doctrine to decide whether the Hague Convention applies to service in Taiwan where resolution of that question depends on whether the United States considers Taiwan a sovereign state.

2. Should the Hague Convention apply to process served in Taiwan where the People's Republic of China is a Signatory to the Convention, Taiwan is not, and the United States has adopted a "one-China" policy recognizing the People's Republic of China as the sole legal government of China.

QUESTION PRESENTED – Continued

3. Is a state judicial decision that purports to require a litigant to seek and obtain review by this Court as a precondition for seeking collateral relief in other courts inconsistent with Rule 10 of the Rules of this Court and with this Court's holding in *Fay v. Noia*, 372 U.S. 391, 436 (1963), that certiorari is not "a normal appellate channel."

LIST OF PARTIES AND RULE 29.6 STATEMENT

Both the petitioner, Dr. Paul Tien, and respondent, Mrs. Ming Tien, are individuals. The American University of the Caribbean ("AUC"), Medical Education Information Office, Inc. ("MEIO"), Medical Education Services, Inc. ("MESI"), American University of the Caribbean, N.V. ("AUCNV"), and The American University of the Caribbean School of Medicine ("AUCSM") are additional parties to this proceeding. AUCSM is the parent corporation of AUCNV and AUCNV is the parent corporation of MESI. There are no publicly held companies that own 10% or more of these corporations' stock.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES AND RULE 29.6 STATEMENT	iii
TABLE OF AUTHORITIES	vii
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
STATUTES AND TREATIES INVOLVED	2
STATEMENT OF THE CASE	2
A. Factual Background	2
B. Proceedings Below	3
C. Related Proceedings	4
REASONS FOR GRANTING THIS PETITION	4
I. The Courts Are Split on Whether Multilateral Treaties Not Ratified by Taiwan Nonetheless Apply to Taiwan and Whether that Issue Is Even Justiciable	8
A. Background	8
1. Hague Convention	8
2. Taiwan Relations Act	9
3. Florida Law	11
B. The Circuits Are Split on Whether Taiwanese Sovereignty Is Justiciable	12
1. The Ninth Circuit View	12

TABLE OF CONTENTS – Continued

Page

2. The D.C. and Second Circuits Views 13

3. Where an Issue Is Not Justiciable, the Party Bearing the Burden of Persuasion Cannot as a Matter of Law Carry Its Burden 17

II. The Federal Courts Are Split on Whether the Multilateral Treaties Ratified by PRC, But Not by Taiwan, Apply to Taiwan 19

III. Any State Rule Requiring a Party to Seek and Obtain Review by this Court as a Precondition for Further Judicial Review in Another Court Is Inconsistent with Article III and Rule 10 of this Court 24

CONCLUSION 27

APPENDIX

Opinion of the District Court of Appeal, Third District ..... App. 1

Order on Motion to Quash Service of Process, Circuit Court of the Eleventh Judicial Circuit ..... App. 2

Transcript of Ruling of Judge Leon Firtel (pp. 102-04), Circuit Court of the Eleventh Judicial Circuit ..... App. 4

TABLE OF CONTENTS – Continued

Page

Decision denying rehearing en banc of the District Court of Appeal of Florida, Third District.....App. 7

Foreign Relations and Intercourse: Taiwan Relations

22 U.S.C. § 3301.....App. 8

22 U.S.C. § 3302.....App. 10

22 U.S.C. § 3303.....App. 11

FLA STAT. § 48.031 (2010).....App. 14

FLA STAT. § 48.194 (2010).....App. 18

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.....App. 22

TABLE OF AUTHORITIES

Page

CASES

767 Third Ave. Assoc. v. Consulate Gen. of the Socialist Fed. Rep. of Yugoslavia, 218 F.3d 152 (2d Cir. 2000) 12, 13, 15

American Univ. of the Caribbean v. Ming Tien, 26 So. 3d 56 (Fla. Dist. Ct. App. 2010) 4

Atl. Mut. Ins. Co. v. Northwest Airlines, 24 F.3d 958 (7th Cir. 1994) 21

Atl. Mut. Ins. Co. v. Northwest Airlines, Inc., 796 F. Supp. 1188 (E.D. Wis. 1992) 20, 23, 24

Avero Belgium Ins. v. American Airlines, Inc., 423 F.3d 73 (2d Cir. 2005) 12

Baker v. Carr, 369 U.S. 186 (1962) 6, 14, 16

Baron v. Baron, 454 So. 2d 86 (Fla. Dist. Ct. App. 1984) 25

Bethae v. S.P. Richards Co., No 06-2604, 2007 WL 2791457 (D.S.C. Sept. 24, 2007) 20

Carlini v. Fla. Dep't of Legal Affairs, 521 So. 2d 254 (Fla. Dist. Ct. App. 1988) 17

Cosmetech Int'l, LLC v. Der Kwei Enter. and Co., Ltd., 943 F. Supp. 311 (S.D.N.Y.1996) 20

Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363 (2000) 16

Director, OWCP v. Greenwich Collieries, 512 U.S. 267 (1994) 19

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 26

TABLE OF AUTHORITIES – Continued

Page

Familia de Boom v. Arosa Mercantil, S.A., 629 F.2d 1134 (5th Cir. 1980).....17

Fay v. Noia, 372 U.S. 391 (1963).....26, 27

Fed. Election Comm'n v. Wis. Right to Life, 551 U.S. 449, (2007).....25

Fugitsu Ltd. v. Nanya Tech. Corp., No. 06-6613, 2007 WL 484789 (N.D. Cal. Feb. 9, 2007).....20

Henry Tien v. Royal Bank of Canada, 36 So. 3d 682 (Fla. Dist. Ct. App. 2010).....4

Henzel v. Noel, 598 So. 2d 220 (Fla. Dist. Ct. App. 1992).....17

Honig v. Doe, 484 U.S. 305 (1988).....25

In re Schwinn Bicycle Co., 190 B.R. 599 (Bankr. N.D. Ill. 1995).....23, 24

In re TFT-LCD (Flat Panel) Antitrust Litig., ___ F.R.D.___, No. 07-1827, 2010 WL 4368892 (N.D. Cal. Nov. 2, 2010).....20

Ivancevic v. Artukovic, 211 F.2d 565 (9th Cir.), *cert. denied*, 348 U.S. 818 (1954).....22

James River Ins. Co. v. Kemper Cas. Ins. Co., 585 F.3d 382 (7th Cir. 2009).....19

LG.Phillips LCD Co. v. Chi Mei Optoelectronics Corp., 551 F. Supp. 2d 333 (D. Del. 2008).....20

Lin v. United States, 561 F.3d 502 (D.C. Cir. 2009).....5, 6, 12, 15, 16

Los Angeles v. Lyons, 461 U.S. 95 (1983).....26

TABLE OF AUTHORITIES – Continued

Page

Mingtai Fire & Marine Ins. Co., Ltd. v. United Parcel Serv., 177 F.3d 1142 (9th Cir.), *cert. denied*, 528 U.S. 951 (1999) 6, 12, 13, 21

Morrison v. Nat'l Australia Bank, ___ U.S. ___, No. 08-1191 (June 24, 2010) 22

New York Chinese TV Programs, Inc. v. U.E. Enter., Inc., 954 F.2d 847 (2d Cir.), *cert. denied*, 506 U.S. 827 (1992) 19

Oetjen v. Central Leather Co., 246 U.S. 297 (1918) 15

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) 26

Snider v. Snider, 686 So. 2d 802 (Fla. Dist. Ct. App. 1997) 6

Taylor Made Golf Co., Inc. v. Carsten Sports, Ltd., 175 F.R.D. 658 (S.D. Cal. 1997) 20

Thompson v. Fla. Dep't of Revenue, 867 So. 2d 603 (Fla. Dist. Ct. App. 2004) 17

Volkswagenwerk Aktiengeschellschaft v. Schlunk, 486 U.S. 694 (1988) 8, 18

Wachovia Bank v. Tien, No. 04-20834 (S.D. Fla.), *appeal pending*, Nos. 08-15542 and 09-13555 (11th Cir.) 4

CONSTITUTIONAL PROVISIONS

U.S. CONST., art. III 6, 26

U.S. CONST., art. VI 9, 18

TABLE OF AUTHORITIES – Continued

Page

STATUTES

Taiwan Relations Act, Pub. L. No. 96-8, 93 Stat. 14 (April 10, 1979), *codified at* 22 U.S.C. §§ 3301-3316

22 U.S.C. § 3301 10

22 U.S.C. § 3303(b)(4) 10

22 U.S.C. § 3303(c) 10, 19, 22

28 U.S.C. § 1254(1) i

FLA. STAT. § 48.031 ..... 2, 11

FLA. STAT. § 48.194 ..... 11, 18

FLA. STAT. § 48.194(1) 11

RULES AND REGULATIONS

Fla. R. App. P. 9.030(a) 4

TREATIES

Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361 (Nov. 15, 1965) ..... *passim*

Vienna Convention on the Law of Treaties, 1155 U. N. T. S. 331 (May 23, 1969) 11

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

Joint Communiqué on the Establishment of Diplomatic Relations, January 1, 1979, U.S.–People's Republic of China, Public Papers of the Presidents of the United States: Jimmy E. Carter, 1978, Washington, D.C. (GPO 1979) 9

5B C. Wright & A. Miller, FEDERAL PRACTICE & PROCEDURE: CIVIL § 1353 (2004) 17

Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175 (1989) 17

Myron Tribus, RATIONAL DESCRIPTIONS, DECISIONS AND DESIGNS 128 (Pergamon Press 1969) 19

PETITION FOR A WRIT OF CERTIORARI

Paul Tien respectfully petitions for a writ of certiorari to review the judgment of the District Court of Appeal of Florida, Third District.

OPINIONS BELOW

The opinion of Florida's Third District Court of Appeal is unpublished (Appendix ("App.") 1). The order of the court of appeal denying petitioner's petition for rehearing en banc also is unreported (App. 7).

The order of the Circuit Court Judge of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida is dated December 17, 2009, and also is unpublished (App. 2).

JURISDICTION

The District Court of Appeal of Florida, Third District, entered its judgment on June 23, 2010, and denied a petition for a written opinion, rehearing, and rehearing en banc on September 23, 2010 (App. 1). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND TREATIES INVOLVED

This case involves provisions of the Taiwan Relations Act, Pub. L. No. 96-8, 93 Stat. 14 (April 10, 1979), 22 U.S.C. §§ 3301-3316, Florida's substitute and foreign service laws, FLA. STAT. §§ 48.031 and 48.194, and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361 (Nov. 15, 1965). The pertinent portions of these three laws are reproduced at App. 8-App. 36.

STATEMENT OF THE CASE

A. Factual Background[1]

Paul Tien was born in Tiantin, China and relocated to Taiwan where in 1962, he married Ming Tien. The couple moved to the United States in 1964. Dr. Tien earned a doctorate in electrical engineering, and eventually became a professor and Dean of the Department of Electrical Engineering at Belmont Technical College in Ohio. In 1975, he became President of Belmont. In the late 1970s, Dr. Tien, realizing that there were not enough medical schools in the United States to meet student demand, established a medical college in Montserrat, a British territorial island in the Caribbean. The school proved to be a

[1] The facts presented in this section were taken from the opinions in cases listed in the Related Proceedings section of this Petition.

financial success. In 1980, the Tiens separated. Dr. Tien moved from Ohio to Montserrat and resided there for many years. Since 2006, Dr. Tien has been a resident of Taiwan. Ming Tien moved to Miami, Florida. Dr. Tien is neither a resident nor citizen of the United States and has never resided in Florida.

In October 2006, Dr. Tien instituted divorce proceedings in Taiwan; the following month, Ming Tien filed suit in the Miami-Dade Circuit Court to dissolve the marriage. In 2007, Ming Tien sought to perfect service of the Florida petition and summons in Taiwan by leaving the documents with an unrelated individual who resided or worked in an apartment on the first floor of the building in which Dr. Tien lived. His apartment, though, was on the second floor. Ming Tien made no effort to comply with the dictates of the Hague Convention.

B. Proceedings Below

On June 29, 2007, Dr. Tien, appearing specially through counsel, moved to quash service arguing that substitute service to the wrong apartment was inadequate under Florida law. On December 17, 2009, the trial court denied Dr. Tien's motion, concluding that service was "sufficient," and that Paul Tien had "actual notice" of his wife's divorce proceeding (App. 2-App. 3, App. 6). The trial court's order denying the motion to quash was affirmed on appeal *per curiam* without a written opinion (App. 1). The Third District Court of Appeal of Florida thereafter denied Dr. Tien's

motion for a written opinion, rehearing, or rehearing *en banc* (App. 7). A written opinion is a precondition for seeking further review in the Supreme Court of Florida. *See* Fla. R. App. P. 9.030(a). Accordingly, the Third District Court of Appeal's decision is the final decision of the highest court of Florida authorized to hear this case.

C. Related Proceedings

1. *Henry Tien v. Royal Bank of Canada*, 36 So. 3d 682 (Fla. Dist. Ct. App. 2010).
2. *American Univ. of the Caribbean v. Ming Tien*, 26 So. 3d 56 (Fla. Dist. Ct. App. 2010).
3. *Wachovia Bank v. Tien*, No. 04-20834 (S.D. Fla.), *appeal pending*, Nos. 08-15542 and 09-13555 (11th Cir.).

REASONS FOR GRANTING THIS PETITION

This case presents three issues. On two, there is a split among the lower courts. The third involves a state court decision inconsistent with Rule 10 of this Court that arguably compels litigants not only to seek, but to obtain, review in this Court of state court judgments as a precondition to collaterally attacking those judgments.

The first two questions bring to the fore a judicial split on two fundamental, treaty-related issues both involving Taiwan and both with significant

commercial and jurisprudential implications. First, does the Hague Convention, acceded to by the People's Republic of China ("PRC"), automatically apply to service in Taiwan under the United States' "one China" policy, even though Taiwan is not a signatory to the Convention? The federal courts have split on whether multinational treaties, such as the Hague Convention, ratified by the PRC, but not by Taiwan, apply to Taiwan. This uncertainty is understandable given that the Taiwan Relations Act does not address this issue and resolution turns on whether Taiwan is a sovereign state, an issue that the United States Government has carefully avoided addressing through what one court has characterized as "strategic ambiguity." *Lin v. United States*, 561 F.3d 502, 505 (D.C. Cir. 2009). If Taiwan is, under United States law, a sovereign state, then it can enter into treaties with other nations on its own accord. Under those circumstances, it would be inappropriate to foist upon a sovereign, such as Taiwan, multinational treaties that it had not ratified. If, on the other hand, Taiwan is not a sovereign state, but merely a province of the PRC, then, under the one China policy, the PRC is Taiwan's sovereign and treaties entered into by the PRC necessarily apply to Taiwan, just as treaties entered into by the United States apply to all fifty states. In short, the applicability of the Hague Convention to Taiwan turns, in part, on whether Taiwan is a sovereign state under United States law. But

whether a court has the jurisdiction to resolve that issue is itself open to doubt and disagreement.[2]

Second, can a court even entertain the question of whether the Hague Convention applies to Taiwan where any adjudication would require a court to decide whether Taiwan is a sovereign state under United States law? Here, there is a circuit split on whether the question of sovereignty is justiciable, with the D.C. and Second Circuits holding that the question is not justiciable and the Ninth Circuit suggesting it is. *Compare Mingtai Fire & Marine Ins. Co., Ltd. v. United Parcel Serv.*, 177 F.3d 1142 (9th Cir.), *cert. denied*, 528 U.S. 951 (1999) *with Lin v. United States*, 561 F.3d 502. If the question is not

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[2] In *Baker v. Carr*, 369 U.S. 186, 198 (1962), this Court distinguished between subject matter jurisdiction and justiciability. The existence, *vel non*, of subject matter jurisdiction is, with a few exceptions, a question of whether a claim arises under federal law. Justiciability is therefore more analogous to notions of prudential standing, a form of deference, than it is to true Article III jurisdiction. However, where an issue is not justiciable because it implicates authority outside the sphere of Article III, such as issues turning on foreign policy, that lack of justiciability is no different from a lack of Article III jurisdiction. That is especially the case where, as here, a state court is required to resolve a matter outside of its constitutional sphere, *e.g.*, a foreign policy issue. Challenges to the subject matter jurisdiction of a court, federal or state, are never waived. *See Snider v. Snider*, 686 So. 2d 802, 804 (Fla. Dist. Ct. App. 1997). The state court here lacked subject matter jurisdiction to even consider whether service had been perfected. Therefore, the fact that foreign policy issues, which were outside the jurisdiction of the state family court, were not raised in that court is not relevant here.

justiciable, as Dr. Tien believes, then, absent congressional action, no court can decide whether the Hague Convention applies to Taiwan and therefore, no court can decide whether service of process in Taiwan has been perfected. In such a setting, Ming Tien could never meet her burden of demonstrating that she had perfected service, and the Florida court would lack *in personam* jurisdiction over Dr. Tien.

If the Court finds that the issue is justiciable, then Dr. Tien requests that the Court resolve the split among the courts as to whether the Hague Convention applies to service of process in Taiwan by virtue of the PRC's accession to the Convention even though it has not been ratified by Taiwan.

Third, can a State by judicial decree require a party, as a precondition to collaterally attack a judgment, to file a petition for certiorari with this Court, whether or not a case merits review by this Court. In *Baron v. Baron*, 454 So. 2d 86, 87 (Fla. Dist. Ct. App. 1984), a divorce case, the court stated that "[a]n aggrieved defendant must seek reversal in an appellate court of the state involved or, if he is unsuccessful there, in the Supreme Court of the United States. However, he cannot later attack the judgment on jurisdictional grounds if he does not avail himself of those remedies, or if the judgment is affirmed, or if the appellate court or the Supreme Court of the United States declines to consider the case." It is inconsistent with Rule 10 of this Court and with this Court's jurisdiction for any court to treat review by this Court as a necessary step in an exhaustion

process: This Court is the last arbiter and not a stepping stone to state court review.

I. The Courts Are Split on Whether Multilateral Treaties Not Ratified by Taiwan Nonetheless Apply to Taiwan and Whether that Issue Is Even Justiciable

A. Background

1. Hague Convention

The Hague Convention is a multi-national treaty that governs service of summons on persons in signatory countries. *See Volkswagenwerk Aktiengeschellschaft v. Schlunk*, 486 U.S. 694, 698 (1988); Hague Convention, Art. 3, Nov. 15, 1965, 20 U.S.T. 361 (App. 23). The Convention requires each signatory state to establish a central authority to receive requests for service of documents from other countries. *See* 20 U.S.T. 362, T.I.A.S. 6638, Art. 2 (App. 22-App. 23). Once a central authority receives a request in the proper form, it must serve the documents by a method prescribed by the internal law of the receiving state or by a method designated by the requester and compatible with that law. *See id.* at Art. 3 (App. 23). The central authority must then provide a certificate of service that conforms to a specified model. *Id.* at Art. 6 (App. 24). A state also may consent to methods of service within its boundaries other than a request to its central authority. *Id.* at arts. 8-11, 19 (App. 25-App. 26, App. 30). *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. at 698-99. The

Hague Convention preempts all state and federal service rules in the United States. *See id.*, 486 U.S. at 699 ("by virtue of the Supremacy Clause, U.S. Const., art. VI, the Convention preempts inconsistent methods of service prescribed by state law in all cases to which it applies"). The United States ratified the Hague Convention in 1967, and the PRC adopted it through accession on May 6, 1991. *See* <http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=17>.

Taiwan is not a signatory to the Convention. Thus, service under Florida law of a Florida summons and complaint in Taiwan could have been theoretically proper in this case, but only if the PRC's accession to the Convention did not govern Taiwan and had plaintiff complied with the other requirements of Florida law.

2. Taiwan Relations Act

On January 1, 1979, the United States recognized the PRC as the legitimate government of a single China which includes the island of Taiwan. The United States simultaneously withdrew recognition of Taiwan, as a nation apart from the PRC.[3]

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[3] *See* Joint Communiqué on the Establishment of Diplomatic Relations, January 1, 1979, U.S. – People's Republic of China, Public Papers of the Presidents of the United States: Jimmy E. Carter, 1978, Washington, D.C. (GPO 1979) at 2264-66. On the issue of Taiwan's status, the English text states, "[t]he Government of the United States of America recognizes the Government of the People's Republic of China as the sole legal Government of

(Continued on following page)

Shortly thereafter, Congress enacted the Taiwan Relations Act ("TRA"), Pub. L. No. 96-8, 93 Stat. 14 (April 10, 1979), codified at 22 U.S.C. § 3301 *et seq.*, which delineates the United States' new, unofficial relationship with "the people on Taiwan." *See id.* § 3301 (App. 8) ("[T]he Congress finds that the enactment of this Act is necessary – (1) to help maintain peace, security, and stability in the Western Pacific; and (2) . . . authoriz[e] the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan."). Although bilateral treaties between the United States and Taiwan are to remain in effect, the United States has not entered into any bilateral treaty with Taiwan since January 1, 1979. *See id.* § 3303(c) (App. 14). Nor does the TRA discuss the status of international agreements ratified by the PRC, but not Taiwan.

Under the TRA, Taiwanese law continues to control whenever the application of a United States law depends on the law applicable in Taiwan. *See* 22 U.S.C. § 3303(b)(4) (App. 12). Thus, if Florida authorized a party to serve process in Taiwan in accordance with Taiwanese law, then process could be perfected pursuant to Taiwanese law. Florida law, though, makes no such provision.

China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan. The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China. . . ."

3. Florida Law

Florida law authorizes service of a state court process overseas "in the same manner as service within this state by any officer authorized to serve process in the state where the person is served." FLA. STAT. § 48.194(1) (App. 18). However, "[s]ervice of process on persons outside the United States may be required to conform to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters." *Id.* Here, plaintiff elected to use substitute service, which although authorized by Florida law, is not authorized by the Hague Convention, absent local government intervention. *See* FLA. STAT. § 48.031 (App. 14). If Taiwan is deemed bound by the Hague Convention as a result of the PRC's accession to the Convention, then the Convention controls both under Florida law and the Supremacy Clause, and private substitute service, even if perfected, would be improper. If Taiwan is not a sovereign state, but rather a province of China, then treaties entered into by the PRC necessarily govern Taiwan. This is so because only a state can enter into a treaty and one of the primary indicia of statehood is sovereignty. *See* Vienna Convention on the Law of Treaties, preamble and Art. 1(a), 1155 U.N.T.S. 331, 333 (May 23, 1969) (noting that "sovereign equality" is an indicia of

statehood and that only states and certain organizations not relevant here can enter into treaties).[4]

B. The Circuits Are Split on Whether Taiwanese Sovereignty is Justiciable

There is a circuit split on whether a foreign nation's sovereignty is subject to judicial review. Two circuits – the D.C. and Second Circuits – have held that the issue of sovereignty is outside the ken of the judiciary, while one circuit – the Ninth – has acted to the contrary. *See Lin v. United States*, 561 F.3d 502; *767 Third Ave. Assoc. v. Consulate Gen. of the Socialist Fed. Rep. of Yugoslavia*, 218 F.3d 152 (2d Cir. 2000) (ascertaining the identity and date of sovereignty of another nation even to resolve a commercial dispute in the United States is not justiciable); *Mingtai Fire & Marine Ins. Co., Ltd. v. United Parcel Serv.*, 177 F.3d 1142.

1. The Ninth Circuit View

In *Mingtai Fire & Marine Ins. Co., Ltd. v. United Parcel Serv.*, the court was asked to determine

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[4] Although the United States has not ratified the Vienna Convention on the Law of Treaties, United States courts have relied upon it "as an authoritative guide to the customary international law of treaties," insofar as it reflects actual state practices. *See Avero Belgium Ins. v. American Airlines, Inc.*, 423 F.3d 73, 79 & n.8 (2d Cir. 2005). The Department of State considers the Vienna Convention on the Law of Treaties an authoritative guide to current treaty law and practice. *See id.*

whether PRC's status as a High Contracting Party to the Warsaw Convention was sufficient to bind Taiwan to the terms of that Convention even though Taiwan was not a signatory. The court approached this issue by first pointing out two distinct areas of foreign relations, *i.e.*, the effects of foreign sovereign recognition and the status of treaties. Recognizing that "the U.S. Supreme Court has repeatedly held that the Constitution commits to the Executive Branch alone the authority to recognize, and to withdraw recognition from, foreign regimes," courts must "answer questions regarding the status of treaties following a change in the sovereign status of one of the relevant entities by deferring to the political branches' understanding of the resulting obligation." *Id.* at 1144-45. Rather than declining to entertain the case, however, the Ninth Circuit examined various Executive Branch issuances on the subject before concluding that Taiwan ought not be bound by the Warsaw Convention because it was not a signatory. The court cautioned that was merely deferring to the position of the Executive Branch in a district court amicus brief that Taiwan is not to be bound by China's adherence to the Warsaw Convention. Deference, however, is an aspect of adjudication and as such, presupposes jurisdiction and justiciability. The court's actions did not mirror its words.

2. The D.C. and Second Circuits Views

767 Third Ave. Assoc. v. Consulate Gen. of the Socialist Fed. Rep. of Yugoslavia, 218 F.3d at 155, was,

as characterized by the Second Circuit, a "garden-variety landlord tenant dispute" in which the plaintiff was seeking to recover unpaid rent for offices leased to the former Socialist Federal Republic of Yugoslavia. The plaintiff, however, was seeking to recover those rents from the five successor states. The district court held that whether the five states automatically assumed the liabilities of Yugoslavia was a political question and not justiciable. The Second Circuit agreed, finding that any one of a number of the *Baker v. Carr* factors counseled in favor of declining to entertain the case. According to the Court in *Baker*, 369 U.S. at 217:

> Prominent on the surface of any case held to involve a political question is found [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

The Second Circuit held that the "dominant consideration in any political question inquiry is whether there is a textually demonstrable constitutional commitment of the issue to a coordinate political department." *767 Third Ave. Assocs.*, 218 F.3d at 160 (quoting *Lamont v. Woods*, 948 F.2d 825, 831 (2d Cir. 1991) (internal quotations and citations omitted)). The court concluded that the matter of successor liability was a matter committed to the Executive Branch and therefore, "is not subject to judicial inquiry or decision." *Id.* at 160 (quoting *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302 (1918) ("The conduct of foreign relations of our Government is committed by the Constitution to the Executive and Legislative – 'the political' – Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.")). The court also held that there were no judicially discoverable and manageable standards for resolving the dispute.

The D.C. Circuit reached a similar conclusion in *Lin v. United States*, 561 F.3d 502. There plaintiffs, all of whom were Taiwanese nationals, wanted United States-issued passports even though they were not United States citizens. According to the court, plaintiffs' claims hinged on their nationality – Chinese, Taiwanese or United States – and "[d]etermining Appellants' nationality would require [the court] to trespass into a controversial area of U.S. foreign policy in order to resolve a question the Executive Branch intentionally left unanswered for over sixty

years: who exercises sovereignty over Taiwan. This we cannot do. Because the political question doctrine bars consideration of Appellants' claims, the district court had no choice but to dismiss Appellants' complaint for lack of subject matter jurisdiction." *Lin*, 561 F.3d at 503-04.

This case is no different. Here, as in *Lin*, resolution turns on whether Taiwan is a sovereign state. If Taiwan is a sovereign, then it would be improper to burden it with treaties that it did not ratify merely because another state has ratified those treaties. Inversely, if Taiwan is not a sovereign, but merely a province of the PRC, then treaties ratified by the PRC ought to apply to Taiwan. But, over the years, "the Executive has gone out of its way to avoid making that determination [of sovereignty], creating an information deficit. . . ." *Id.* at 506. If a matter is not justiciable in a federal court because it turns on foreign policy, it is certainly not justiciable in a state court. *See Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000).

Certiorari is sought for the Court to confirm that under *Baker*, determining whether the Hague Convention applies to service of process in Taiwan is a political question, not subject to judicial review.

3. Where an Issue Is Not Justiciable, the Party Bearing the Burden of Persuasion Cannot as a Matter of Law Carry Its Burden

Whether Taiwanese sovereignty is justiciable is not an idle question: it may be dispositive of this case. In Florida, as in the federal system, the burden of proof to establish proper service of process is on the party seeking to invoke the court's jurisdiction; here that is Ming Tien. *See Thompson v. Fla. Dep't of Revenue*, 867 So. 2d 603, 605 (Fla. Dist. Ct. App. 2004) ("The burden of proof to sustain the validity of service of process is upon the person who seeks to invoke the jurisdiction of the court and, without proper service of process, the court lacks personal jurisdiction over the defendant."); *Henzel v. Noel*, 598 So. 2d 220, 221 (Fla. Dist. Ct. App. 1992) (citing *Carlini v. Fla. Dep't of Legal Affairs*, 521 So. 2d 254 (Fla. Dist. Ct. App. 1988)) ("The burden of proof to sustain the validity of service of process is on the party seeking to invoke the jurisdiction of the court."); *Familia de Boom v. Arosa Mercantil, S.A.*, 629 F.2d 1134, 1139 (5th Cir. 1980); 5B C. Wright & A. Miller, FEDERAL PRACTICE & PROCEDURE: CIVIL § 1353, at 342 (2004) (The burden of proof to establish proper service of process is on plaintiffs.). That burden, though, can only be met if the law governing service is known. In the absence of a legal standard, there is nothing against which the adequacy of service can be judged. *See* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175, 1179 (1989) ("Rudimentary

justice requires that those subject to the law must have the means of knowing what it prescribes. It is said that one of emperor Nero's nasty practices was to post his edicts high on the columns so that they would be harder to read and easier to transgress."). Here, if the Hague Convention applies to service in Taiwan, Ming Tien must comply with the requirements of the Convention. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. at 699 ("by virtue of the Supremacy Clause, U.S. Const., art. VI, the [Hague] Convention preempts inconsistent methods of service prescribed by state law in all cases to which it applies"). No one claims that she met those requirements in this case. In contrast, if the Hague Convention does not apply, then the adequacy of service is judged against Florida law. *See* FLA. STAT. § 48.194 (App. 18). Where the law governing service, though, is not only unknown, but due to the political question doctrine, unknowable, a plaintiff can never meet that burden and therefore, absent executive branch or congressional intervention, a Florida state court can never exercise *in personam* jurisdiction based on substitute service in Taiwan.[5] This is so because where there is no information indicating

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[5] A plaintiff could theoretically perfect service in the absence of information by complying with all possible alternatives, *i.e.*, complying with Florida substitute service law and the Hague Convention. However, it is not possible to perfect service in Taiwan in compliance with the Hague Convention. Taiwan, as non-signatory to the Convention, does not appear to have in place the mechanisms and procedures required by the Convention.

which of two events is more probable (*i.e.*, Hague Convention applies or Hague Convention does not apply), then the least biased outcome is one where each is equally probable. *See* Myron Tribus, RATIONAL DESCRIPTIONS, DECISIONS AND DESIGNS 128 (Pergamon Press 1969). Equipoise though is the legal death knell of the party bearing the burden of proof. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994) (the party bearing the burden of persuasion loses any tie); *James River Ins. Co. v. Kemper Cas. Ins. Co.*, 585 F.3d 382, 385 (7th Cir. 2009) (same).

II. The Federal Courts Are Split on Whether the Multilateral Treaties Ratified by PRC, But Not by Taiwan, Apply to Taiwan

A number of federal courts have grappled with and split over whether Taiwan is automatically bound by PRC treaties, even assuming the issue is justiciable. The TRA has put to rest certain issues, such as whether bilateral agreements between the United States and Taiwan survived the adoption of the one China policy. *See, e.g.*, *New York Chinese TV Programs, Inc. v. U.E. Enter., Inc.*, 954 F.2d 847 (2d Cir.), *cert. denied*, 506 U.S. 827 (1992) (holding that a bilateral treaty between the United States and Taiwan remains in effect by virtue of the TRA (22 U.S.C. § 3303(c)), even though the United States no longer recognizes Taiwan). But the TRA does not address the issue presented here, namely whether the Hague Convention (or any other multinational treaty) applies to

service of process in Taiwan by virtue of the PRC's accession to that treaty.

Two cases reflect the divergent approaches that courts have taken when assessing whether the one China policy automatically binds Taiwan as a result of bilateral or multilateral agreements between the PRC and the United States.[6] In *Atlantic Mut. Ins. Co. v. Northwest Airlines, Inc.*, 796 F. Supp. 1188 (E.D. Wis. 1992), plaintiffs alleged that certain of their machinery components were damaged as a result of the defendant's negligence during the air transport of the components from Milwaukee, Wisconsin to Taipei, Taiwan. The defendant removed the case to

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[6] In other cases discussing service in Taiwan, the issue of PRC accession to the Hague Convention and its impact on service in Taiwan was neither raised nor addressed. *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, ___ F.R.D. ___, No. 07-1827, 2010 WL 4368892 (N.D. Cal. Nov. 2, 2010) ("Taiwan is not a signatory to the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents . . . and thus service cannot be effected on Chunghwa pursuant to the Hague Convention."); *Fugitsu Ltd. v. Nanya Tech. Corp.*, No. 06-6613, 2007 WL 484789 (N.D. Cal. Feb. 9, 2007) (because Taiwan is not a party to the Hague Convention, only subsection two of Rule 4(f) is applicable); *Cosmetech Int'l, LLC v. Der Kwei Enter. and Co., Ltd.*, 943 F. Supp. 311, 316 (S.D.N.Y.1996) (holding that since Taiwan is not a party to the Hague Convention, compliance with the laws of Taiwan in serving the manager of a corporation was sufficient to establish service of process under Rule 4); *LG.Phillips LCD Co. v. Chi Mei Optoelectronics Corp.*, 551 F. Supp. 2d 333 (D. Del. 2008) (same); *Bethae v. S.P. Richards Co.*, No. 06-2604, 2007 WL 2791457 (D.S.C. Sept. 24, 2007) (same); *Taylor Made Golf Co., Inc. v. Carsten Sports, Ltd.*, 175 F.R.D. 658, 661 (S.D. Cal. 1997) (same).

the federal District Court arguing that the case was governed by the Warsaw Convention even though the destination nation, *i.e.*, Taiwan, was not a signatory to the Convention. In denying plaintiff's motion to remand, the Court reasoned that since the United States formally recognized the PRC as the legitimate government of China (as did over 100 other countries), the PRC's claim when ratifying the Warsaw Convention in 1958, that the Convention "shall of course apply to the entire Chinese territory, including Taiwan" is sufficient to extend the treaty's reach to include Taiwan and that as a result, Taiwan was automatically bound by the treaty even though it was not a signatory to it.[7]

As noted above, the Ninth Circuit in *Mingtai Fire & Marine Ins.*, 177 F.3d 1142, reached the opposite conclusion in the course of examining whether the Warsaw Convention applied to the non-signatory Taiwan by virtue of PRC's accession to that treaty and the recognition by virtually every nation of PRC as the legitimate government of China, including the island of Taiwan. In concluding that Taiwan was not

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[7] Two days after the case settled, the Coordination Council for North American Affairs attempted to resuscitate it by intervening. The Council represents the interests of Taiwan in the United States following the end of diplomatic relations that accompanied the United States' recognition of the PRC. The district court denied the Council's motion to intervene; the court of appeals affirmed without reaching the merits of the underlying decision. *See Atl. Mut. Ins. v. Northwest Airlines*, 24 F.3d 958 (7th Cir. 1994).

bound by the Warsaw Convention, the court looked to the TRA, various Executive Branch statements, and an amicus brief submitted by the United States in the district court proceeding. According to the court, the TRA, 22 U.S.C. § 3303(c), provided that the laws regarding the U.S. and Taiwan that existed before the derecognition, and all treaties and international conventions between the U.S. and Taiwan that existed before the derecognition, were to continue in full force after the derecognition. The court reasoned, therefore, that although the U.S. had severed diplomatic relations with Taiwan, the Government continued to have separate relations with Taiwan. Furthermore, according to the court, the TRA preserved all of the United States' treaty obligations toward Taiwan, but contained no language extending to Taiwan those obligations owed to the PRC. The court viewed the absence of language, *i.e.*, congressional silence, authorizing the automatic extension to Taiwan of multilateral treaties ratified by PRC to be particularly persuasive. However, congressional intent cannot be inferred from silence. *See Morrison v. Nat'l Australia Bank*, ___ U.S. ___, No. 08-1191, slip op. at 11 (June 24, 2010). The absence of language in a statute extending PRC treaty obligations to Taiwan does not mean that the statute precluded such as extension. In the context of treaties, the opposite may be the case. For example, when a nation adds states or land to its jurisdiction, that nation's treaty obligations necessarily extend to the newly acquired states or lands, unless the treaty or the United States Government indicates otherwise. *See Ivancevic v. Artukovic*, 211

F.2d 565 (9th Cir.), *cert. denied*, 348 U.S. 818 (1954) (confirming the Government's view that an extradition treaty made between the United States and the Kingdom of Serbia survived the creation of the Federal People's Republic of Yugoslavia).

The Ninth Circuit also relied on the State Department's publication which listed numerous treaties in force between the U.S. and China that are not in force between the U.S. and Taiwan. China, for instance, was listed in this publication as a signatory of the Warsaw Convention, while Taiwan was not. The Court failed to acknowledge, though, that Taiwan was given special status in the publication, that the central issue of its sovereignty was never addressed in the publication, and that following the recognition of the PRC, the United States has not entered into any bilateral agreements with Taiwan. The fact that the publication listed multilateral treaties to which Taiwan is a signatory is not evidence of how the United States views Taiwan, but rather a simple recordation of fact and nothing more.

Nor is the Ninth Circuit's resolution of the issue an outlier. In *In re Schwinn Bicycle Co.*, 190 B.R. 599 (Bankr. N.D. Ill. 1995), one of the parties to a bankruptcy proceeding, relying on the court's reasoning in *Atlantic Mutual*, 796 F. Supp. 1188, argued that the Hague Convention governed service of process in Taiwan because the PRC had been recognized as the lawful government of China and that the PRC is a signatory to the Hague Convention. The court rejected

the argument finding the *Atlantic Mutual* court's reasoning "flawed." *Id.* at 611. The *Schwinn* court reasoned, much like the Ninth Circuit, that the TRA preserved all of the United States' treaty obligations toward Taiwan, but contains no language extending those obligations owed to the PRC to Taiwan. *See id.* As noted earlier, though, one cannot read language into a statute that simply is not there; only Congress can do that and that is especially the case where the resolution turns on foreign policy considerations.

The uncertainty surrounding the applicability of the Hague Convention hampers commercial activity between Taiwan and the United States. Yet, there is no indication that the disagreement among the courts will be resolved on its own. If the issue is justiciable, then this Court should intercede to minimize this juridical impediment to international commerce. If the issue is not justiciable, then Congress and the President should be informed of the gap in the law, so that it can be appropriately caulked.

III. Any State Rule Requiring a Party to Seek and Obtain Review by this Court as a Pre-condition for Further Judicial Review in Another Court Is Inconsistent with Article III and Rule 10 of this Court

This is a case in which collateral challenges to any final decree attempting to allocate property have occurred and are likely to continue to occur. *See* Related Proceedings, *supra.* In Florida, though, there

is concern that a litigant's ability to collaterally challenge a state court judgment for lack of *in personam* jurisdiction may hinge on whether that party has sought review with this Court. In *Baron v. Baron*, 454 So. 2d 86, a husband sought to challenge enforcement in Florida of a New Hampshire divorce decree arguing that the New Hampshire court lacked *in personam* jurisdiction to entertain the case and therefore, the judgment was void. In the course of denying relief, the Florida appeals court stated that the prior judgment is *res judicata* with respect to all aspects of judgment including jurisdiction, unless the losing party sought "reversal in an appellate court of the state involved or, if he is unsuccessful there, in the Supreme Court of the United States. However, he cannot later attack the judgment on jurisdictional grounds if he does not avail himself of those remedies, or if the judgment is affirmed, or if the appellate court or the Supreme Court of the United States declines to consider the case." *Id.*, 454 So. 2d at 87. To the extent that *Baron* is read to require a party to seek review by this Court as a condition of some state law exhaustion process, *Baron* misconstrues the relationship between the state and federal court systems, and the nature of certiorari review by this Court.[8]

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[8] The act of filing this Petition does not moot the issue. The second prong of the *Baron* court's statement indicates that collateral attack is not warranted if this Court denies a petition for certiorari. In any event, this case fits neatly within the established exception to mootness for disputes capable of repetition, yet evading review. *See Fed. Election Comm'n v. Wis.*

(Continued on following page)

First, this Court reviews state court judgments and not the other way around. *See* U.S. CONST., art. III; *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-416 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983). Second, compelling a litigant to file a certiorari petition as condition of further court review misunderstands review by this Court and is inconsistent with this Court's holding in *Fay v. Noia,* 372 U.S. 391. There, respondent challenged a state rule, as incorporated into the federal habeas statute, which barred a state prisoner from seeking federal habeas relief if he had failed to timely seek certiorari in this Court from an adverse state decision. In setting aside that putative exhaustion requirement, the Court reminded litigants that

> [t]he writ of certiorari, which today provides the usual mode of invoking this Court's appellate jurisdiction of state criminal judgments, "is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." Supreme Court Rule 19(1) [now Rule 10]. Review on certiorari therefore

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Right to Life, 551 U.S. 449, 462-63 (2007); *Honig v. Doe*, 484 U.S. 305, 331-32 (1988) (Rehnquist, C.J., concurring); *Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). The fact that one or both of these parties have already been involved in multiple lawsuits in the past few years, indicates that further litigation, especially an enforcement action, involving one or both is likely so that the issue of *in personam* jurisdiction will arise again.

> does not provide a normal appellate channel in any sense comparable to the writ of error.

Fay v. Noia, 372 U.S. at 436.

Any Florida rule that treats this Court as a stepping stone in a scheme of appellate exhaustion is inconsistent with *Fay v. Noia* and Rule 10. Thus, this Court should invoke its supervisory authority to remind states of this limitation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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TIEN v. TIEN, 3D09-3531
(Fla.App. 3 Dist. 6-23-2010)

Paul Tien, et al., Appellants, v. Ming Tien, Appellee

No. 3D09-3531

District Court of Appeal of Florida, Third District

Opinion filed June 23, 2010

An Appeal from the Circuit Court for Miami-Dade County, Leon Firtel, Judge, Lower Tribunal No. 06-32010.

Dirk Lorenzen; Buckner, Shiffrin, et al.; and Jeannie M. Etter; Aballi Milne Kalil, Hendrick G. Milne, Joshua D. Poyer and Renee R. Tischler, for appellants.

Pathman Lewis and Roger Slade, Anna Marie Hernandez, Alan K. Fertel and Lara A. Schenkman, for appellees.

Before RAMIREZ, C.J., and WELLS and CORTIÑAS, JJ.

PER CURIAM.

Affirmed.

Not final until disposition of timely filed motion for rehearing.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION: 06-32010 FC 33

IN RE: THE MARRIAGE OF

MING TIEN,

Petitioner/Former Wife,

And

PAUL TIEN

Respondent/Former Husband,

And

AMERICAN UNIVERSITY OF THE CARIBBEAN, a Cayman Islands Company; AMERICAN UNIVERSITY OF THE CARIBBEAN, N.V., a Netherlands Antilles Company; THE AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE, a Cayman Islands Company; MEDICAL EDUCATION INFORMATION OFFICE, INC., a Florida corporation; MEDICAL EDUCATION SERVICES, INC., a Florida Corporation,

Defendants.

ORDER ON
MOTION TO QUASH SERVICE OF PROCESS

(Filed Dec. 17, 2009)

This cause came before the Court on October 30, 2009 and November 4, 2009 on the motion of Paul Tien to quash service of process. The Court denies the

motion for the reasons stated in the transcript of November 4, 2009.

Done and Ordered in Chambers in Miami, Miami Dade County, Florida this 17th day of December, 2009.

/s/ Leon Firtel
Leon Firtel, Circuit Court Judge

CC: Counsel of Record

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 06-32010 FC 33

IN RE: THE MARRIAGE OF MING TIEN

Petitioner/Wife,

and

PAUL TIEN,

Respondent/Husband,

and

AMERICAN UNIVERSITY OF THE CARIBBEAN, a Cayman Islands Company; AMERICAN UNIVERSITY OF THE CARIBBEAN, N.V., a Netherlands Antilles Company; THE AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE, a Cayman Islands Company; MEDICAL EDUCATION INFORMATION OFFICE, INC., a Florida corporation; MEDICAL EDUCATION SERVICES, INC., a Florida corporation,

Defendants.

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The above-entitled case came on for hearing before the Honorable Leon Firtel as Judge of the above-styled court on Tuesday, November 4th, 2009 at 175 Northwest 1st Avenue, Room 2128, Miami, Florida, commencing at 2:12 p.m. – 4:30 p.m.

* * *

[Page 102] THE COURT: I'm following the law, and I'm following the logic. Okay. I'm done. Have a seat, both of you. I'm done.

Look, I could sit here, I strip out everything that you want me to strip out, insofar as declarations that Mr. Tien or Dr. Tien's side has offered up to this Court. And through implication, and conclusion, and everything else of that nature, I can, you know, fight with this thing for many months [Page 103] trying to come up with what I consider to be a more erudite ruling than sitting here, after listening to two days of arguments about the matter, and having only had the opportunity to peruse these . . . oh, I would say . . . probably about nine inches of papers that have been placed before me.

I've listened very patiently to this, and I've heard enough. Okay. And I think I've looked at enough in the documents . . . and I'm not saying that I haven't looked at it at all, but I've done what I could do in the period of time that I've been given. And, you know, you've got to do a lot of sifting and you've got to do a lot of looking through this matter to try to harmonize it.

And, yes, you've got your arguments. Okay. You got your argument. Now, if the Third District thinks that I'm wrong, then this is going to be all a big waste of time, this is going to be a big waste of time because they are going to reverse, but I'm upholding the service. I'm denying the Motion to Quash.

Now, I'm doing it on the basis of the fact that I think that service that has been provided is sufficient. I think that Dr. Tien has actual notice of this matter, and can come in here and [Page 104] defend, and should come in here and defend. And I think that, all in all, if that's not good enough, he's estopped based upon what's going on in this case since 2006 when it started, and certainly since Judge Feder said: Turn over his address.

We're done. I've ruled.

MS. ETTER: And Your Honor, are you finding that the Return of Service was valid?

THE COURT: I'm finding that the Return of Service is valid. That's it. I'm done. Now we get to litigate the divorce.

MR. LORENZEN: Your Honor, you want a separate order or will your transcript stand as your ruling?

THE COURT: The last part is my ruling.

That's it. I could sit here and write it 27 different ways. That's my ruling here.

(Thereupon, the hearing was concluded at 4:30 p.m.)

IN THE DISTRICT COURT OF A [sic]
OF FLORIDA THIRD DISTRICT
JULY TERM, A.D. 2010
SEPTEMBER 23, 2010

CASE NO.: 3D09-3531

LOWER TRIBUNAL NO. 06-32010

PAUL TIEN,
Appellant(s)/Petitioner(s),
vs.
MING TIEN,
Appellee(s)/Respondent(s).

Upon consideration, appellant's motion for written opinion and motions for rehearing and for rehearing of order awarding attorney's fees are hereby denied.

RAMIREZ, C.J., and WELLS and CORTIÑAS, JJ., concur.

Appellant's motion for rehearing en banc is hereby denied.

cc:
Arthur J. England, Jr.
Dirk Lorenzen
Jeannie M. Etter
Roger A. Slade
Craig P. Kalil
Gerald Kogan
1a

22 U.S.C. §§ 3301-3303

Foreign Relations And Intercourse; Taiwan Relations

22 U.S.C. § 3301 Congressional findings and declaration of policy

(a) Findings

The President having terminated governmental relations between the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, the Congress finds that the enactment of this chapter is necessary –

(1) to help maintain peace, security, and stability in the Western Pacific; and

(2) to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.

(b) Policy

It is the policy of the United States –

(1) to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan, as well as the people on the China mainland and all other peoples of the Western Pacific area;

(2) to declare that peace and stability in the area are in the political, security, and

economic interests of the United States, and are matters of international concern;

(3) to make clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means;

(4) to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States;

(5) to provide Taiwan with arms of a defensive character; and

(6) to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.

(c) Human rights

Nothing contained in this chapter shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States.

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22 U.S.C. § 3302. Implementation of United States policy with regard to Taiwan

(a) Defense articles and services

In furtherance of the policy set forth in section 3301 of this title, the United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.

(b) Determination of Taiwan's defense needs

The President and the Congress shall determine the nature and quantity of such defense articles and services based solely upon their judgment of the needs of Taiwan, in accordance with procedures established by law. Such determination of Taiwan's defense needs shall include review by United States military authorities in connection with recommendations to the President and the Congress.

(c) United States response to threats to Taiwan or dangers to United States interests

The President is directed to inform the Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom. The President and the Congress shall determine, in accordance with constitutional processes, appropriate action by the United States in response to any such danger.

22 U.S.C. § 3303. Application to Taiwan of laws and international agreements

(a) Application of United States laws generally

The absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979.

(b) Application of United States laws in specific and enumerated areas

The application of subsection (a) of this section shall include, but shall not be limited to, the following:

(1) Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.

(2) Whenever authorized by or pursuant to the laws of the United States to conduct or carry out programs, transactions, or other relations with respect to foreign countries, nations, states, governments, or similar entities, the President or any agency of the United States Government is authorized to conduct and carry out, in accordance with section 3305 of this title, such programs, transactions, and other relations with respect to Taiwan (including, but not limited to, the performance of services for the United

States through contracts with commercial entities on Taiwan), in accordance with the applicable laws of the United States.

(3)

(A) The absence of diplomatic relations and recognition with respect to Taiwan shall not abrogate, infringe, modify, deny, or otherwise affect in any way any rights or obligations (including but not limited to those involving contracts, debts, or property interests of any kind) under the laws of the United States heretofore or hereafter acquired by or with respect to Taiwan.

(B) For all purposes under the laws of the United States, including actions in any court in the United States, recognition of the People's Republic of China shall not affect in any way the ownership of or other rights or interests in properties, tangible and intangible, and other things of value, owned or held on or prior to December 31, 1978, or thereafter acquired or earned by the governing authorities on Taiwan.

(4) Whenever the application of the laws of the United States depends upon the law that is or was applicable on Taiwan or compliance therewith, the law applied by the people on Taiwan shall be considered the applicable law for that purpose.

(5) Nothing in this chapter, nor the facts of the President's action in extending diplomatic recognition to the People's Republic of

China, the absence of diplomatic relations between the people on Taiwan and the United States, or the lack of recognition by the United States, and attendant circumstances thereto, shall be construed in any administrative or judicial proceeding as a basis for any United States Government agency, commission, or department to make a finding of fact or determination of law, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3201 et seq.), to deny an export license application or to revoke an existing export license for nuclear exports to Taiwan.

(6) For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Taiwan may be treated in the manner specified in the first sentence of section 202(b) of that Act (8 U.S.C. 1152(b)).

(7) The capacity of Taiwan to sue and be sued in courts in the United States, in accordance with the laws of the United States, shall not be abrogated, infringed, modified, denied, or otherwise affected in any way by the absence of diplomatic relations or recognition.

(8) No requirement, whether expressed or implied, under the laws of the United States with respect to maintenance of diplomatic relations or recognition shall be applicable with respect to Taiwan.

(c) Treaties and other international agreements

For all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law.

(d) Membership in international financial institutions and other international organizations

Nothing in this chapter may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.

FLA. STAT. § 48.031 (2010)
Service of process generally; service of witness subpoenas.

(1)(a)
Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section.

(b)
Employers, when contacted by an individual authorized to make service of process, shall permit the authorized individual to make service on employees in a private area designated by the employer.

(2)(a)
Substitute service may be made on the spouse of the person to be served at any place in the county, if the cause of action is not an adversary proceeding between the spouse and the person to be served, if the spouse requests such service, and if the spouse and person to be served are residing together in the same dwelling.

(b)
Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two or more attempts to serve the owner have been made at the place of business.

(3)(a)
The service of process of witness subpoenas, whether in criminal cases or civil actions, shall be made as provided in subsection (1). However, service of a subpoena on a witness in a criminal traffic case, a misdemeanor case, or a second degree or third degree felony may be made by United States mail directed to the witness at the last known address, and the service must be mailed at least 7 days prior to the date of the witness's required appearance. Failure of a

witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court.

(b)
A criminal witness subpoena may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed. The subpoena must be posted at least 5 days prior to the date of the witness's required appearance.

(4)(a)
Service of a criminal witness subpoena upon a law enforcement officer or upon any federal, state, or municipal employee called to testify in an official capacity in a criminal case may be made as provided in subsection (1) or by delivery to a designated supervisory or administrative employee at the witness's place of employment if the agency head or highest ranking official at the witness's place of employment has designated such employee to accept such service. However, no such designated employee is required to accept service:

1.
For a witness who is no longer employed by the agency at that place of employment;

2.
If the witness is not scheduled to work prior to the date the witness is required to appear; or

3.
If the appearance date is less than 5 days from the date of service.

The agency head or highest ranking official at the witness's place of employment may determine the days of the week and the hours that service may be made at the witness's place of employment.

(b)
Service may also be made in accordance with subsection (3) provided that the person who requests the issuance of the criminal witness subpoena shall be responsible for mailing the subpoena in accordance with that subsection and for making the proper return of service to the court.

(5)
A person serving process shall place, on the copy served, the date and time of service and his or her identification number and initials for all service of process.

(6)
If the only address for a person to be served, which is discoverable through public records, is a private mailbox, substitute service may be made by leaving a copy of the process with the person in charge of the private mailbox, but only if the process server determines that the person to be served maintains a mailbox at that location.

FLA. STAT. § 48.194 (2010)
Personal Service Outside State

(1)
Except as otherwise provided herein, service of process on persons outside of this state shall be made in the same manner as service within this state by any officer authorized to serve process in the state where the person is served. No order of court is required. An affidavit of the officer shall be filed, stating the time, manner, and place of service. The court may consider the affidavit, or any other competent evidence, in determining whether service has been properly made. Service of process on persons outside the United States may be required to conform to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

(2)
Where in rem or quasi in rem relief is sought in a foreclosure proceeding as defined by s. 702.09, service of process on a person outside of this state where the address of the person to be served is known may be made by registered mail as follows:

(a)
The party's attorney or the party, if the party is not represented by an attorney, shall place a copy of the original process and the complaint, petition, or other initial pleading or paper and, if applicable, the order to show cause issued pursuant to s. 702.10 in a sealed envelope with adequate postage addressed to the person to be served.

(b)
The envelope shall be placed in the mail as registered mail.

(c)
Service under this subsection shall be considered obtained upon the signing of the return receipt by the person allowed to be served by law.

(3)
If the registered mail which is sent as provided for in subsection (2) is returned with an endorsement or stamp showing "refused," the party's attorney or the party, if the party is not represented by an attorney, may serve original process by first-class mail. The failure to claim registered mail is not refusal of service within the meaning of this subsection. Service of process pursuant to this subsection shall be perfected as follows:

(a)
The party's attorney or the party, if the party is not represented by an attorney, shall place a copy of the original process and the complaint, petition, or other initial pleading or paper and, if applicable, the order to show cause issued pursuant to s. 702.10 in a sealed envelope with adequate postage addressed to the person to be served.

(b)
The envelope shall be mailed by first-class mail with the return address of the party's attorney or the party, if the party is not represented by an attorney, on the envelope.

(c)
Service under this subsection shall be considered obtained upon the mailing of the envelope.

(4)
If service of process is obtained under subsection (2), the party's attorney or the party, if the party is not represented by an attorney, shall file an affidavit setting forth the return of service. The affidavit shall state the nature of the process; the date on which the process was mailed by registered mail; the name and address on the envelope containing the process; the fact that the process was mailed registered mail return receipt requested; who signed the return receipt, if known, and the basis for that knowledge; and the relationship between the person who signed the receipt and the person to be served, if known, and the basis for that knowledge. The return receipt from the registered mail shall be attached to the affidavit. If service of process is perfected under subsection (3), the party's attorney or the party, if the party is not represented by an attorney, shall file an affidavit setting forth the return of service. The affidavit shall state the nature of the process; the date on which the process was mailed by registered mail; the name and address on the envelope containing the process that was mailed by registered mail; the fact that the process was mailed registered mail and was returned with the endorsement or stamp "refused"; the date, if known, the process was "refused"; the date on which the process was mailed by first-class mail; the name and address on the envelope containing the process

that was mailed by first-class mail; and the fact that the process was mailed by first-class mail with a return address of the party or the party's attorney on the envelope. The return envelope from the attempt to mail process by registered mail and the return envelope, if any, from the attempt to mail the envelope by first-class mail shall be attached to the affidavit.

CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

(Concluded 15 November 1965)

The States signatory to the present Convention, Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time, Desiring to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure, Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad. This Convention shall not apply where the address of the person to be served with the document is not known.

CHAPTER I – JUDICIAL DOCUMENTS

Article 2

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of

Articles 3 to 6. Each State shall organise the Central Authority in conformity with its own law.

Article 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality. The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

Article 5

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –

a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (*b*) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily. If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed. That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

Article 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention. The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service. The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities. The certificate shall be forwarded directly to the applicant.

Article 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate. The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

Article 8

Each Contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents. Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

Article 9

Each Contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which are designated by the latter for this purpose.

Each Contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

Article 10

Provided the State of destination does not object, the present Convention shall not interfere with –

a) the freedom to send judicial documents, by postal channels, directly to persons abroad,

b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,

c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Article 11

The present Convention shall not prevent two or more Contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding Articles and, in particular, direct communication between their respective authorities.

Article 12

The service of judicial documents coming from a Contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

The applicant shall pay or reimburse the costs occasioned by –

a) the employment of a judicial officer or of a person competent under the law of the State of destination,

b) the use of a particular method of service.

Article 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security. It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not permit the action upon which the application is based. The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention,

and the defendant has not appeared, judgment shall not be given until it is established that –

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

   i) and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled –

a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled –

a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and

b) the defendant has disclosed a *prima facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment. Each Contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment. This Article shall not apply to judgments concerning status or capacity of persons.

CHAPTER II – EXTRAJUDICIAL DOCUMENTS

Article 17

Extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention.

CHAPTER III – GENERAL CLAUSES

Article 18

Each Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence. The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority. Federal States shall be free to designate more than one Central Authority.

Article 19

To the extent that the internal law of a Contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Article 20

The present Convention shall not prevent an agreement between any two or more Contracting States to dispense with –

a) the necessity for duplicate copies of transmitted documents as required by the second paragraph of Article 3,

b) the language requirements of the third paragraph of Article 5 and Article 7,

c) the provisions of the fourth paragraph of Article 5,

d) the provisions of the second paragraph of Article 12.

Article 21

Each Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following –

a) the designation of authorities, pursuant to Articles 2 and 18,

b) the designation of the authority competent to complete the certificate pursuant to Article 6,

c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to Article 9.

Each Contracting State shall similarly inform the Ministry, where appropriate, of –

a) opposition to the use of methods of transmission pursuant to Articles 8 and 10,

b) declarations pursuant to the second paragraph of Article 15 and the third paragraph of Article 16,

c) all modifications of the above designations, oppositions and declarations.

Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them Articles 1 to 7 of the earlier Conventions.

Article 23

The present Convention shall not affect the application of Article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of Article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.

These Articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

Article 24

Supplementary agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the Parties have otherwise agreed.

Article 25

Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties.

Article 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered

into force in accordance with the first paragraph of Article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands. The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth

day after the notification referred to in the preceding paragraph.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently. If there has been no denunciation, it shall be renewed tacitly every five years. Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period. It may be limited to certain of the territories to which the Convention applies. The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following –

a) the signatures and ratifications referred to in Article 26;

b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;

c) the accessions referred to in Article 28 and the dates on which they take effect;

d) the extensions referred to in Article 29 and the dates on which they take effect;

e) the designations, oppositions and declarations referred to in Article 21;

f) the denunciations referred to in the third paragraph of Article 30.